

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3

4 DISNEY MEDIA & ENTERTAINMENT)
DISTRIBUTION LLC,)

5)
6 Petitioner,)

7 vs.)

8 DIGITAL MEDIA TECHNOLOGY HOLDINGS,)
LLC,)

9 Patent Owner.)
_____)

Case No. IPR2024-00736

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18 REMOTE DEPOSITION of HARRIS ELLIOTT TULCHIN,
19 taken on behalf of the Petitioner, with all
20 participants appearing remotely via Zoom
21 videoconference, commencing at 9:09 a.m., on
22 Wednesday, May 7, 2025, before Tami L. Le, Certified
23 Shorthand Reporter 8716, in and for the State of
24 California.

25

1 REMOTE APPEARANCES:

2

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The Deposition Monitor:

Larry Maher

Also present:

David Foster, In-house Counsel
Disney Media & Entertainment Distribution

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I N D E X

WITNESS: HARRIS ELLIOTT TULCHIN

EXAMINATION

PAGE

By Mr. Haber

5

PREVIOUSLY MARKED EXHIBITS:

Exhibit 1001

11

Exhibit 2131

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Paper 18

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1 LAS VEGAS, NEVADA; WEDNESDAY, MAY 7, 2025

2 9:09 A.M.

3 HELD REMOTELY VIA VIDEOCONFERENCE

4 oOo

5 THE STENOGRAPHER: My name is Tami Le. I am
6 a California Certified Shorthand Reporter,
7 License No. 8716.

8

9 HARRIS ELLIOTT TULCHIN,
10 having been first duly sworn, was
11 examined and testified as follows:

12

13 EXAMINATION

14 BY MR. HABER:

15 Q Thank you. As I mentioned earlier, I am
16 Benjamin Haber. I am representing the petitioner in
17 this matter, Disney Media & Entertainment.

18 Can you please state your full name for the
19 record.

20 A Harris Elliott Tulchin.

21 Q And what is your address? Where do you live?

22 A Well, I live at 7152 Mission Hills Drive,
23 Las Vegas, Nevada, 89113.

24 Q And where are you located physically today?

25 A At that same address.

1 Q Okay. Have you ever had your deposition
2 taken before?

3 A Yes.

4 Q Okay. So you know the basics, but I'll just
5 go over a few important points.

6 First, this deposition is being conducted
7 remotely, so I'd like to know if there's anyone else
8 in the room with you or if it's just you.

9 A Just me.

10 Q Okay. And do you have any papers or other
11 documents with you today?

12 A The only thing I have is the patent and my
13 declaration.

14 Q Okay. Are there any notes or annotations on
15 the patent declaration?

16 A Yeah, a couple underlines. That's about it.

17 Q Okay. So I'm going to be asking you a series
18 of questions. I will likely be referring to your
19 declaration and the patent when I ask you those
20 questions.

21 I have electronic copies. I can share screen
22 with electronic copies. You can refer to what's in
23 front of you. That's fine. Just let me know what you
24 would prefer and what you're referring to if you look
25 at anything off screen so I can follow up --

1 **A** Yeah, I think it might be easier for me to
2 just -- you know, I have the two documents here. I
3 can thumb through them, open them up.

4 **Q** Okay. That should be fine. And like I said,
5 you know, if I do pull up anything else, I'll throw it
6 on the screen or otherwise make sure that you have it
7 available to you.

8 **A** Understood.

9 **Q** So I'm going to ask you a series of
10 questions. You are to provide your answers verbally
11 so that the court reporter can take them down.

12 It will be important that we don't speak over
13 each other. So allow me to finish my question before
14 you start your answer, and I will do the same.

15 Is that fair?

16 **A** Fair.

17 **Q** If you don't understand any one of my
18 questions, just I'll ask you to ask me for
19 clarification, ask me for -- to clarify whatever it is
20 you might not understand. Otherwise, I'll just assume
21 that you understand and we can proceed.

22 Is that fair?

23 **A** Sounds good to me.

24 **Q** So from time to time, counsel will object.
25 Please allow time for counsel to state his objection

1 for the record and then answer your question. Even if
2 there is an objection, you are to answer the question
3 unless specifically instructed not to answer the
4 question.

5 Understand?

6 **A I understand.**

7 Q Okay. If you have a phone or other
8 electronic device with you, just make sure it's in
9 silent or vibrate so that we're not interrupted.

10 **A Okay. Let me do that right now. Turn it**
11 **upside down. Okay.**

12 Q Okay. You have been sworn in. You swore an
13 oath to testify truthfully and accurately.

14 Is there any reason why you can't provide
15 your most accurate and truthful testimony today?

16 **A No.**

17 Q Not under the influence of any medications or
18 anything else that would impair your ability to
19 testify truthfully and accurately?

20 **A No.**

21 Q Okay. Can you tell me what your current
22 occupation is.

23 **A Well, I'm an entertainment lawyer. That's my**
24 **primary occupation. And I'm also involved in motion**
25 **picture production finance and distribution.**

1 Q You are -- do you understand that you are
2 being -- you provided the declaration in support of
3 patent owner's positions in the capacity of an expert
4 witness?

5 Do you understand that?

6 A Yes.

7 Q Have you provided expert witness declarations
8 previously?

9 A For other matters?

10 Q Yes.

11 A Yes.

12 Q Have you provided expert witness declarations
13 for matters related to patents previously?

14 A No.

15 Q How many times would you say you have
16 provided expert witness declarations for other
17 matters?

18 A Six or seven times.

19 Q And for those other six or seven times, were
20 you deposed as an expert witness like we're doing here
21 today?

22 A In most cases, yes, unless the case settled.
23 But in most cases I had a deposition taken.

24 Q Okay. Do you have an estimate of the number
25 of kind of expert depositions you've had taken?

1 A Like I said, six or seven times, I believe.

2 Q Okay. Can you tell me what your educational
3 background is.

4 A So I went to the Cornell School of Industrial
5 Labor Relations as an undergrad and received a BS in
6 industrial labor relations, and then I went to law
7 school at Hastings, which is now called the University
8 of California San Francisco, and received my law
9 degree in 1978.

10 Q Do you have any other advanced degrees?

11 A No.

12 Q Do you have any other professional
13 certifications?

14 A No.

15 Q Do you have -- do you have a technical
16 degree?

17 A No.

18 Q It's fair to say you don't have, for example,
19 a degree in electrical engineering, engineering
20 physics, computer engineering, computer science, or a
21 similar field?

22 A Absolutely not.

23 Q So it's fair to say you would not consider
24 yourself to be a technical expert as it relates to
25 these matters?

1 MR. HANDAL: Objection to form.

2 THE DEPONENT: What do you mean by "technical
3 expert"?

4 BY MR. HABER:

5 Q You said you have in front of you the patent
6 at issue in this case. It's been previously marked
7 Exhibit 1001. It's U.S. Patent No. 7,574,725.

8 Is that the patent that you have in front of
9 you?

10 A B2.

11 Q Yeah, B2. Correct.

12 A That's it.

13 Q If I refer to this patent as the '725 patent,
14 will you understand what I'm referring to?

15 A Yes.

16 Q So is it fair to say that you would not
17 consider yourself a technical expert in the technology
18 related to the '725 patent?

19 A I'm an expert about the terms used in the
20 distribution business, but I am not a technical expert
21 on patents.

22 Q That's fair.

23 So the testimony that you're offering is
24 based on your expertise in business areas, not
25 necessarily technical areas; right?

1 **A That is correct.**

2 MR. HANDAL: Belated objection to form on the
3 last question.

4 BY MR. HABER:

5 Q So you said you also have in front of you a
6 copy of the declaration that you have submitted in
7 this matter. That document has been previously marked
8 and submitted in this proceeding as Exhibit 2131. It
9 is entitled "Declaration of Harris Tulchin."

10 Is that the document that you're referring
11 to?

12 **A That is correct.**

13 Q And if you flip to the last page of the
14 document, there's a signature there above the name
15 Harris E. Tulchin.

16 Is that your signature?

17 **A Yes.**

18 Q And the document, above the signature line,
19 says that it's dated February 24th, 2025.

20 Do you see that?

21 **A Correct.**

22 Q Do you recall when you began to work on this
23 document, Exhibit 2131?

24 **A Probably sometime time in December or**
25 **January, December 2024, January 2025, approximately.**

1 MR. HANDAL: Counsel, could you share the
2 document on the screen so --

3 MR. HABER: Sure.

4 MR. HANDAL: -- we know exactly what you're
5 showing us.

6 MR. HABER: Give me just one moment.

7 BY MR. HABER:

8 Q Can you see the screen?

9 A Yes.

10 Q Okay. You can see on the screen the
11 Declaration of Harris E. Tulchin, Exhibit 2131. You
12 can see the last page of the document, the signature.

13 This is the same document that you have in
14 front of you; correct?

15 A Correct.

16 Q And as I mentioned, I'll try to follow along
17 with this document on the screen so we can be on the
18 same page, but feel free to refer to the document that
19 you have in front of you.

20 A Thank you.

21 Q Do you recall, when you began working on this
22 document in December of last year, who it was that
23 reached out to you to ask you to prepare this
24 declaration?

25 A I got a call from Nic Stiliadis to ask me if

1 I would talk to Mr. Kent and Mr. Handal about a
2 potential expert witness engagement.

3 Q And what did Mr. Stiliadis ask you
4 specifically?

5 A Just to talk to Tony Handal.

6 Q And who is Mr. Stiliadis?

7 A Mr. Stiliadis, I believe, is the petitioner
8 on this patent, the inventor. That's what it's
9 called, inventor. I think you have that document in
10 front of you.

11 Q Yes.

12 Did you have a relationship with
13 Mr. Stiliadis before he reached out to you in December
14 of last year?

15 A Yes.

16 Q Can you describe for me what that
17 relationship is.

18 A One second. Let me just...

19 Yes. I -- I was -- Nic Stiliadis'
20 entertainment lawyer for many years, starting, I
21 believe, in the late '80s all the way up through, I
22 don't know, mid-2000s.

23 Q So it's fair to say that you represented
24 Mr. Stiliadis in other matters for 20 years or more
25 prior to this engagement?

1 A Approximately. I think that's about right.

2 Q The sorts of matters that you represented
3 Mr. Stiliadis in for those 20 or more years, can you
4 describe at a high level what those entailed.

5 A Well, Mr. Stiliadis was in two businesses.
6 One, he was a producer of motion pictures, and I would
7 be engaged to do things like create a chain of title,
8 the actor agreements, director agreements, deal with
9 insurance matters, locations, crew. And he would
10 sometimes have me review and document license
11 agreements, because he was also in the sales business.

12 And so I would do all kinds of different
13 documents, review them, discuss them, and possibly
14 revise them related to both production and
15 distribution.

16 Q Did you work with Mr. Stiliadis on the
17 preparation of any patents?

18 A No.

19 Q So you didn't work with Mr. Stiliadis on --
20 in connection with the patent at issue in this case?

21 A No.

22 Q Is there a reason why your representation of
23 Mr. Stiliadis ceased in the mid-2000s?

24 A I think Mr. Stiliadis, you know, took a
25 breather from -- from the business and he, you know,

1 **basically retired for a while, and now he's back in**
2 **the business. So he contacted me.**

3 Q And I assume during your representation of
4 Mr. Stiliadis from the 1980s to the mid-2000s, you
5 were compensated by either him or his companies?

6 A **Yes, sir.**

7 Q Can you estimate how much you were
8 compensated over the 20-or-so period during which you
9 represented Mr. Stiliadis?

10 A **Hundreds of thousands of dollars.**

11 Q And you're being compensated for your time
12 preparing this declaration; correct?

13 A **Correct.**

14 Q And I see in your declaration that your rate
15 is \$750 an hour; is that correct?

16 A **A very low rate, but yes.**

17 Q Have you been compensated for the time spent
18 on this matter to date?

19 A **Yes.**

20 Q How much would you -- compensation would you
21 say you received to date?

22 A **Approximately \$10,000.**

23 Q And are you being compensated for your time
24 during the deposition today?

25 A **I'm supposed to be.**

1 Q How much time would you say that you spent
2 preparing the declaration that you submitted in this
3 matter?

4 A It's hard to say, you know. I honestly don't
5 know the answer to that question.

6 Q Okay. Did you spend any time preparing for
7 your deposition today?

8 A Yes.

9 Q Can you estimate how much time you spent
10 preparing for your deposition today?

11 A Five, six hours maybe. Maybe more. I don't
12 know the exact amount.

13 Q Can you tell me what you did to prepare for
14 your deposition today.

15 A Well, I reread a number of times the
16 declaration, and I referred to the patent in the --
17 with respect to the sections that I quoted in my
18 declaration.

19 Q Did you speak with anyone to prepare for your
20 deposition today?

21 A Yes.

22 Q Who did you speak with?

23 A Mr. Handal.

24 Q Did you speak with Mr. Stiliadis?

25 A Might have been once, and that was it.

1 Q Okay. And maybe my question wasn't a
2 hundred percent clear, so just let me break this down
3 a little bit.

4 When you were preparing your declaration from
5 December up until when it was submitted, did you speak
6 with Mr. Stiliadis regarding the preparation of your
7 declaration?

8 A No.

9 Q Okay. And so when you testified earlier that
10 you spoke with Mr. Stiliadis, that was in connection
11 with preparing for the deposition today; is that
12 right?

13 A Yeah. It was just a brief conversation about
14 a case that I found in some research that I did, but I
15 ultimately realized that it was not relevant to this
16 case. So it was really a conversation that was not
17 relevant to this matter at this time.

18 Q Okay. What was -- what was -- what was your
19 original thought as to why the case was relevant?

20 A It --

21 MR. HANDAL: Objection; beyond the scope.
22 I'm not sure if we're getting into a privileged area.

23 BY MR. HABER:

24 Q I don't think I'm asking you for any
25 privileged information.

1 So the question is, what was your original
2 thought as to why the issue was relevant to this case?
3 And I understand the objection, but you can answer.

4 **A You know, it was a case -- I thought it was**
5 **relevant, but I -- I, you know, subsequently learned**
6 **it wasn't. So I don't even remember the case at the**
7 **moment.**

8 Q Do you remember what the issue was?

9 **A Let's see. The issue. I think it had**
10 **something to do with hotel viewing of films.**

11 Q Video-on-demand-type issues?

12 **A I don't know if it was video on demand.**

13 MR. HANDAL: Objection; mis- --
14 mischaracterizes the testimony.

15 BY MR. HABER:

16 Q Okay.

17 MR. HANDAL: You got to give me a chance to
18 object, Harris.

19 THE DEPONENT: Okay.

20 BY MR. HABER:

21 Q But whatever -- whatever the issue was, the
22 discussion was that it was not relevant to the issues
23 here, and so it wasn't included in your declaration or
24 anything that matters for this case.

25 Is that fair?

1 **A That is fair.**

2 Q Okay. Can you tell me the process that you
3 went through to write the declaration that was
4 submitted here.

5 **A Yes. I had a rather lengthy discussion with**
6 **Mr. Handal. Mr. Handal quizzed me about various**
7 **aspects of the patent and definitions of terms**
8 **included in the patent. And after that lengthy**
9 **discussion, there may have been an even further**
10 **discussion. He sent an initial draft of a declaration**
11 **that embodied the conversations that we had.**

12 Q And the initial draft that was provided to
13 you, there are a number of -- strike that. I'm going
14 to ask a different question.

15 The definitions that are in this declaration,
16 were those definitions provided to you by counsel?

17 THE DEPONENT: Are you objecting or are
18 you...

19 MR. HANDAL: Objection to form, lack of
20 foundation.

21 BY MR. HABER:

22 Q You can answer.

23 **A Repeat the question, please.**

24 MR. HANDAL: Objection; mischaracterizes the
25 evidence.

1 BY MR. HABER:

2 Q The definitions that are -- I'm sorry. Let
3 me just restate the question.

4 The definitions that are in this declaration,
5 Exhibit 2131, were those definitions provided to you
6 by counsel?

7 A No.

8 Q When the declaration was provided to you, did
9 you have edits or revisions?

10 A Yes, I did.

11 Q And the edits or revisions that you made to
12 the declaration, were those all implemented in the
13 final declaration as executed?

14 A As I recall, 9- -- 98 percent of them were.

15 Q Do you know an individual named Mr. John
16 Daniels in connection with this case?

17 A No.

18 Q Other than Mr. Stiliadis and Mr. Handal, have
19 you spoken with anyone else regarding the substance of
20 this case?

21 A No.

22 MR. HANDAL: I don't mean to interrupt, but,
23 Madam Court Reporter, could you put the live feed into
24 the chat. The audio I'm getting is not the best, but
25 I think it might be helpful if you could do that.

1 MR. HABER: Why don't we go off the record
2 for a second.

3 (Discussion held off the record.)

4 BY MR. HABER:

5 Q All right. We were talking about your
6 declaration a bit. If we can go to Paragraph 5 of
7 your declaration. And there's a sentence there that
8 begins:

9 "I understand that the Patent deals
10 with technology comprising a central
11 server of a computer..."

12 The question that I have is, what is your
13 understanding of the patented technology based on?

14 A Well, it's a system of marketing and
15 distributing motion pictures, and it includes both the
16 motion picture itself and various associated marketing
17 materials that are things like trailers, TV spots,
18 newspaper advertisements, posters, radio
19 advertisements.

20 And all of that material is transmitted to a
21 central server, and then the central server can
22 transmit, upon request, to a exhibition house, such as
23 a movie theater, the various elements of the marketing
24 material that I just described, plus the film itself.

25 Q So is it fair to say that your, kind of,

1 understanding of the patent is focused on the business
2 aspects of marketing feature films rather than the
3 technical implementation details of the servers, for
4 example?

5 **A Correct.**

6 THE DEPONENT: By the way, where's Tony? I
7 don't see him anymore.

8 MR. HABER: He's still there.

9 MR. HANDAL: I'm here.

10 THE DEPONENT: You're blocked on my screen.

11 MR. HANDAL: I might have drifted off your
12 screen. There might be an arrow on the other tiles.

13 (Simultaneous speaking.)

14 THE DEPONENT: I want to make sure you're
15 there, my man. Just want to make sure you're still
16 there.

17 MR. HABER: He's still here.

18 MR. HANDAL: Yeah, no, I'm here.

19 MR. HABER: All right.

20 MR. HANDAL: If I'm dropped by the system,
21 I'll let you know.

22 MR. HABER: Yeah.

23 MR. HANDAL: That's a joke. That's like --

24 MR. HABER: Raise your hand if you're not
25 here.

1 MR. HANDAL: Yeah, I'll raise my hand if I'm
2 not here.

3 MR. HABER: We do have a technical kind of
4 assistance on the call. So if anyone drops off,
5 they'll let us know.

6 BY MR. HABER:

7 Q Are you familiar with the patent system,
8 generally?

9 A Generally.

10 Q Are you an inventor on any patents?

11 A No.

12 MR. HANDAL: Beyond the scope.

13 BY MR. HABER:

14 Q Do you own any patents?

15 A Sadly --

16 MR. HANDAL: Beyond the scope.

17 THE DEPONENT: -- no.

18 BY MR. HABER:

19 Q Have you worked on any patent-related issues
20 in the past?

21 A No.

22 Q Is it your understanding that the patent at
23 issue in this case is limited to feature film
24 applications?

25 A Yeah, but primarily it seems to be feature --

1 MR. HANDAL: Objection; beyond the scope.

2 But you may answer.

3 BY MR. HABER:

4 Q I think your answer was --

5 MR. HANDAL: It calls for a conclusion of
6 law.

7 BY MR. HABER:

8 Q I think your answer was interrupted.

9 So is it your understanding that the patent
10 at issue in this case is limited to feature film
11 applications?

12 A At the time of the art, when the patent was
13 filed, it's my understanding that the primary product
14 that was referred to in the patent were feature films.

15 Q In Paragraph 6 of your declaration, the last
16 sentence of that paragraph talks about a computer
17 located at an exhibition space, such as an exhibitor's
18 movie theater.

19 Do you see that?

20 A Yes, I do.

21 Q Is it your opinion that the exhibitors and
22 the exhibition space referenced in the patent is
23 limited to movie theaters?

24 A Not necessarily.

25 Q So you would agree then that the exhibitors

1 and the exhibition space may include other venues than
2 movie theaters; right?

3 MR. HANDAL: Objection; that calls for a
4 conclusion of law, mischaracterizes the evidence.

5 THE DEPONENT: Do you want me to answer?

6 BY MR. HABER:

7 Q Yes.

8 A **Please repeat the question.**

9 Q So you would agree, then, that the exhibitors
10 and the exhibition space referenced and discussed in
11 the patent may include other venues than movie
12 theaters; right?

13 MR. HANDAL: Same objection.

14 THE DEPONENT: Well, primarily, in my mind,
15 I'm thinking about broadcast exhibitors or television
16 stations.

17 BY MR. HABER:

18 Q So then is it your testimony that the
19 exhibition space and exhibitors cover only movie
20 theaters and broadcast exhibitors, such as television?

21 MR. HANDAL: Objection; calls for a legal
22 conclusion.

23 THE DEPONENT: In my mind, we're talking
24 about television -- television stations and movie
25 theaters.

1 BY MR. HABER:

2 Q You can skip ahead to Paragraph 11 of your
3 declaration.

4 A Okay. Got it.

5 Q That sentence begins:

6 "During the Relevant Period,
7 'distribution' was an industry term,
8 still in use today, which was used to
9 describe the process of marketing a
10 film and supplying copies to exhibition
11 venues and performing other marketing
12 functions."

13 Is it your opinion that the term
14 "distribution" requires marketing?

15 A Distribution typically involves marketing,
16 yes.

17 Q Is there any difference between marketing and
18 distribution, in your mind?

19 A Distribution is a term that includes
20 marketing, but it also includes the transmission or
21 transport of the film as well as marketing materials.

22 Q Is it possible to have distribution, such as
23 the transmission of the film, without marketing?

24 A It's possible, but it's not a very good use
25 of the process.

1 Q The definition of distribution that you
2 provide in Paragraph 11, you don't cite any evidence
3 for this; right?

4 A I cite my -- my experience, 45 years in this
5 business, understanding what the term means as the,
6 you know, professionals in our business would
7 understand it as well.

8 Q Okay. That's fair.

9 So the definition that you provide is based
10 on your experience. It's not based on any specific
11 document or exhibit; correct?

12 A No.

13 Q The end of Paragraph 12, the sentence is
14 describing the term, quote, "distribution." And you
15 state here that it would not have been understood to
16 refer to file downloading.

17 Do you see that?

18 A Yes.

19 Q What is your evidence for that statement?

20 A Well, I mean, I just look at the patent and I
21 don't see anything about file downloading.

22 Q Are there particular parts of the patent that
23 you're referring to?

24 A I think it's Claim 1.

25 Q Your opinion is based on reviewing Claim 1.

1 Is it based on anything else -- any other part of the
2 patent?

3 MR. HANDAL: Objection; mischaracterizes the
4 testimony.

5 THE DEPONENT: Well, there are other claims
6 that relate to this, but primarily Claim 1.

7 BY MR. HABER:

8 Q Is there anywhere in the patent that
9 specifically says that the term "distribution" does
10 not include file downloading?

11 A I'm waiting for an objection.

12 Q Hearing no objection.

13 A I'm waiting for an objection. I don't like
14 the question.

15 MR. HANDAL: We're going a little bit --
16 okay. Just beyond the scope, objection to form,
17 argumentative.

18 BY MR. HABER:

19 Q Okay. So, first, you know, I appreciate that
20 you're a lawyer and it's very hard to step out of that
21 role, but please don't, as the witness, object to my
22 questions. That's for your lawyer to do.

23 A I'm just trying to make him pay attention.
24 That's all.

25 Q We can't -- you're here to answer my

1 questions, so please try to do that.

2 **A I will. I just want to make sure Anthony's**
3 **paying attention; that's all.**

4 Q Well, let me ask my question again.

5 **A Okay.**

6 Q Is there anywhere in the patent that
7 specifically says that the term "distribution" does
8 not include file downloading?

9 **A Well, that's not a matter that I considered**
10 **when I rendered my opinion, and I'm not a technical**
11 **expert on patents. So I can't tell you the answer to**
12 **that question.**

13 Q Okay. Fair.

14 Would it surprise you if the patent says
15 something different than that?

16 **A I can always be surprised, but I -- that's**
17 **not how I understood it.**

18 Q Do you have the patent in front of you?

19 **A Yes.**

20 Q I want to direct your attention to Column 3.
21 At the top of a patent, there are columns. And so
22 Column 3 and then there's line numbers in the middle.
23 Around Line 17. And I'll bring it up on the screen.

24 And the patent says around Column 3, Line 17:
25 "The distribution of the multimedia

1 includes downloading digital material
2 from the server system for digital
3 display to an audience."

4 Do you see that?

5 A Yes.

6 Q So the patent describes that distribution
7 includes downloading digital material; right?

8 A Yeah. Respectfully, Counsel, I don't read it
9 that way, and I think you need to clarify what you
10 mean by "downloading."

11 Q So in Paragraph 12 of your declaration, you
12 use the word "file downloading."

13 Do you see that?

14 A Yes.

15 Q What do you mean by "file downloading"?

16 A What I mean by "file downloading," at least
17 my understanding at the time -- and -- and it really
18 hardly existed in 2000 -- is the transfer of either
19 the film, possibly marketing material as well, but
20 mostly the film, to a private viewer who's not in an
21 audience. It's not in the public. It's private. And
22 it's a direct private link between a
23 producer/distributor and a -- and a purchaser of that
24 content.

25 Q And when the patent says "The multimedia

1 includes downloading digital material," is it your
2 opinion that the patent is using the term
3 "downloading" differently than you're using the term?

4 **A No. I think that the term "downloading" in**
5 **this particular sentence simply refers to the rest of**
6 **the patent which talks about a system of transferring**
7 **motion pictures and marketing materials to a central**
8 **server, and the central server having the possibility**
9 **of transmitting all that material to either a**
10 **broadcast exhibitor or a movie theater for a showing**
11 **of the film to the public.**

12 **Q I'm trying to understand the distinction that**
13 **you're drawing, since your declaration and the patent**
14 **are using the same word.**

15 Are you suggesting that downloading, as you
16 understand it, implies some sort of private viewing as
17 opposed to public viewing?

18 **A I think you should --**

19 MR. HANDAL: Objection; mischaracterizes the
20 testimony.

21 THE DEPONENT: Yeah, please rephrase the
22 question.

23 BY MR. HABER:

24 **Q When you described your use of the term**
25 **"downloading" in this -- in your declaration, you seem**

1 to be drawing some distinction between public and
2 private.

3 Is that -- is that accurate, or is there some
4 other distinction that you were trying to explain?

5 A That's -- that's an accurate description.

6 Q I'm sorry. Did you say that's an accurate or
7 that's inaccurate?

8 A An, A-N.

9 Q Okay. So is it then your opinion that the
10 term "distribution" requires some level of
11 distribution to the public as opposed to some
12 distribution to a private entity?

13 MR. HANDAL: Objection to form, vague,
14 mischaracterizes the testimony.

15 BY MR. HABER:

16 Q The question is, is it your opinion then that
17 the term "distribution" requires some level of
18 distribution to the public as opposed to distribution
19 to a private entity?

20 A In my --

21 MR. HANDAL: Objection to form --

22 THE DEPONENT: Go ahead.

23 MR. HANDAL: -- mischaracterizes the
24 testimony, vague.

25 THE DEPONENT: Would you like to rephrase the

1 question, Counsel.

2 BY MR. HABER:

3 Q No. That's the question that I have.

4 A **Okay. Then please repeat the question.**

5 Q The question is, is it your opinion, then,
6 that the term "distribution" requires some level of
7 distribution to the public as opposed to distribution
8 to a private entity?

9 A **Okay. My reading of the patent is that this**
10 **system is designed to furnish both -- both a movie and**
11 **marketing materials to a broadcast exhibitor or a**
12 **movie theater which would be showing that movie to the**
13 **public. That's my understanding what the patent's**
14 **about.**

15 Q What was your understanding -- how did you
16 come by your understanding that the patent requires
17 showing the movie in a movie theater as opposed to
18 some other venue?

19 MR. HANDAL: Objection to form, calling for a
20 conclusion of law.

21 THE DEPONENT: Well, I've been in this
22 business for a long time. And in 2000, the -- the
23 transmission of -- of film at that time, based on the
24 technology that exists -- existed, really was not in
25 wide use, if at all. And I know that because it

1 wasn't until 2003 that Apple TV started the process of
2 furnishing films to private buyers of content.

3 BY MR. HABER:

4 Q Is there a portion of the patent that you're
5 looking at that is the basis for your understanding
6 that the patent requires a movie theater as opposed to
7 some other venue?

8 MR. HANDAL: Objection; calls for a legal
9 conclusion.

10 THE DEPONENT: I don't even think --

11 MR. HANDAL: Mischaracterizes the prior
12 testimony.

13 THE DEPONENT: There wasn't even a question.

14 BY MR. HABER:

15 Q So the question is, is there a portion of the
16 patent that you're looking at that forms the basis of
17 your understanding that the patent requires a movie
18 theater as opposed to some other venue?

19 MR. HANDAL: Objection to form, calls for a
20 legal conclusion.

21 THE DEPONENT: My opinion and my reading of
22 the patent is that it specifically dealt with two
23 types of exhibitors: A broadcast exhibitor showing
24 films to the public and a movie theater showing films
25 to the public.

1 BY MR. HABER:

2 Q Okay. I want to -- do you have the patent in
3 front of you?

4 A Yes.

5 Q I want to direct your attention to Figure 1
6 of the patent.

7 And in Figure 1 of the patent, there's a
8 movie theater in the lower left-hand corner. It's
9 identified as 18a.

10 Do you see that?

11 A Yes.

12 Q There are other venues shown there in
13 Figure 1; right?

14 A Right.

15 Q And so is it your opinion that the patent
16 does not cover any of those other venues?

17 A First of all --

18 MR. HANDAL: Objection; calls for a legal
19 conclusion.

20 BY MR. HABER:

21 Q Go ahead.

22 MR. HANDAL: Beyond the scope.

23 THE DEPONENT: You're there, Tony; right?

24 MR. HANDAL: Yes, I'm here.

25 THE DEPONENT: Okay. Just checking.

1 BY MR. HABER:

2 Q All right. So the question is, is it your
3 opinion that the patent doesn't cover any of these
4 other venues that are shown in Figure 1?

5 MR. HANDAL: Objection; beyond the scope,
6 calls for a legal conclusion.

7 THE DEPONENT: I'm going to repeat what I
8 said last time. My general understanding of the
9 patent was that it was at the time primarily developed
10 for transmission of movies and marketing material to
11 primarily television, broadcast television stations,
12 and movie theaters.

13 Now, when looking at the patent, I see high
14 school. Well, that is also a public viewing. I
15 didn't consider and I didn't really think about
16 anything else in this patent.

17 BY MR. HABER:

18 Q So in forming your opinion, you didn't
19 consider Figure 1?

20 A I looked at Figure 1, and at the time I -- I
21 didn't see "satellite television operator," but
22 frankly, I -- I still don't think it -- it describes
23 what was going on at the time in the relevant period
24 as we talk about.

25 Q But you would agree, for example, that there

1 can be a public showing in a high school, for example?

2 A Yes.

3 MR. HANDAL: Objection; beyond the scope,
4 calls for a legal conclusion.

5 BY MR. HABER:

6 Q And you would agree that a satellite
7 television operator can provide multimedia for a
8 public showing in any public place; correct?

9 MR. HANDAL: Objection; beyond the scope,
10 calls for a legal conclusion.

11 BY MR. HABER:

12 Q Do you need me to repeat the question?

13 A Yeah.

14 Q You would agree that a satellite television
15 operator can provide multimedia for a public showing
16 in any public place; correct?

17 MR. HANDAL: Same objection.

18 THE DEPONENT: Yeah. Honestly, in -- in
19 reviewing the patent, I didn't consider that.

20 BY MR. HABER:

21 Q And there are -- in the patent -- so this is
22 Figure 1. There's other descriptions in the patent
23 describing Figure 1. And these other venues such as a
24 high school -- and I can direct you to Column 4,
25 Line 20.

1 Is it fair to say that you didn't consider
2 that particular part of the patent either?

3 MR. HANDAL: Objection to form, going beyond
4 the scope.

5 THE DEPONENT: Yeah, you're going to have to
6 repeat exactly what line you're talking about here.

7 BY MR. HABER:

8 Q I'll bring it up on the screen too. Hold on
9 one moment.

10 A **Just give me the line. I can't read it on**
11 **there anyway.**

12 Q Column 4, around Line 20.

13 And so the question is, is it fair to say
14 that you didn't consider the particular part of this
15 specification, Column 4, Line 20, when you were
16 offering --

17 (Simultaneous speaking.)

18 (Reporter seeks clarification.)

19 Q -- you were offering your opinions in your
20 declaration?

21 MR. HANDAL: Same objections. Beyond the
22 scope, mis- -- objection to form.

23 BY MR. HABER:

24 Q I can restate my question, if it would be
25 easier.

1 **A Okay.**

2 **Q So the question is, is it fair to say that**
3 **you didn't consider the particular part of the**
4 **specification that I directed to you, Column 4,**
5 **Line 20, when you were offering the opinions you set**
6 **out in your declaration?**

7 **A Well --**

8 **MR. HANDAL: Objection; beyond the scope.**
9 **Objection to form.**

10 **BY MR. HABER:**

11 **Q You can answer.**

12 **A In forming my opinion for this patent, I**
13 **primarily focused on the -- what I understood to be**
14 **the art at the time, the relevant period, which was**
15 **transmitting films and marketing material to broadcast**
16 **exhibitors who showed the film to the public, to movie**
17 **theaters, which showed the film to the public. And,**
18 **you know, in my view a high school also is showing**
19 **film to the public.**

20 **So that's how I analyzed this and that's how**
21 **I thought about it, and that's how I formulated my**
22 **opinion.**

23 **Q So my question is a little bit more specific.**
24 **Specifically as to the opinions offered in**
25 **your declaration, do you recall considering the**

1 paragraph that I've pointed to you in the
2 specification, starting at Column 4, Line 20?

3 **A I just answered that question.**

4 Q I'm not sure I understood the answer.
5 Is the answer "no"?

6 **A I guess I'll have to -- can we have the court**
7 **reporter read back the answer that I gave.**

8 Q Well, so I have the realtime. Like, I can
9 see the answer that you gave. You didn't give me a
10 yes-or-no answer.

11 Are you able to give me a yes-or-no answer to
12 that question?

13 MR. HANDAL: Okay. Making same objection;
14 beyond the scope, calling for conclusions of law,
15 objection to form.

16 BY MR. HABER:

17 Q I can ask it again if it would be helpful.

18 **A Yeah, ask it again.**

19 **But, again, my answer is what I gave you last**
20 **time.**

21 Q Okay. And so I'm asking a more specific
22 question. I think it calls for a yes-or-no answer.

23 And so the question is, specifically as to
24 the opinions offered in your declaration, do you
25 recall considering the paragraph that I pointed to you

1 in this specification, starting at Column 4, Line 20?

2 And I think that is a yes-or-no question.

3 MR. HANDAL: Objection to form, beyond the
4 scope.

5 THE DEPONENT: I may have seen it, but I
6 don't recall considering it.

7 BY MR. HABER:

8 Q Would you agree that the '725 patent is not
9 specifically limited to the film industry?

10 MR. HANDAL: Objection; calls for conclusion
11 of law, beyond the scope.

12 THE DEPONENT: And what do you mean by "film
13 industry"?

14 BY MR. HABER:

15 Q So if you look at your declaration, above
16 Paragraph 10, you state:

17 "Meaning of terms in the film
18 industry."

19 Do you see that?

20 A Yes.

21 Q Do you have a particular understanding of the
22 term "film industry" as recited in your declaration?

23 A In my mind, this was feature films primarily.

24 Q Okay. So my prior question is using the
25 understanding that I think you have expressed in your

1 declaration.

2 And the question is, would you agree that the
3 '725 patent is not specifically limited to the film
4 industry?

5 MR. HANDAL: Objection; mischaracterizes the
6 testimony, objection to form, argumentative.

7 THE DEPONENT: During the relevant period
8 when this patent was put together, primarily the way I
9 understood it and the way I read it and the way it was
10 described is it was primarily for motion picture film
11 distribution.

12 BY MR. HABER:

13 Q Are you familiar with the term "video on
14 demand"?

15 A Yes.

16 Q Is it your opinion that the '725 patent would
17 not cover a video-on-demand distribution system?

18 MR. HANDAL: Objection; calls for conclusion
19 of law, beyond the scope.

20 THE DEPONENT: Yeah, in my understanding and
21 reading of the patent, to the extent of my
22 nontechnical knowledge, which I have -- I have no
23 technical knowledge, video on demand was not the
24 subject of this patent at the time it was formed.
25 ///

1 BY MR. HABER:

2 Q Do you have an opinion one way or the other
3 on whether the patent would cover a video-on-demand
4 system as they currently exist today?

5 MR. HANDAL: Objection; calls for a legal
6 conclusion, beyond the scope.

7 THE DEPONENT: Repeat the question, please.

8 BY MR. HABER:

9 Q Do you have an opinion one way or the other
10 on whether the patent would cover a video-on-demand
11 system as they currently exist today?

12 MR. HANDAL: Objection; calls for a
13 conclusion of law, argumentative, mischaracterizes the
14 witness' testimony.

15 THE DEPONENT: We're talking about the
16 relevant period here, and the relevant period is 2000,
17 2001. I didn't see this patent applying to video on
18 demand at the time.

19 BY MR. HABER:

20 Q Okay. Is there a reason why you believe this
21 patent would not apply to video-on-demand systems that
22 existed at the time in the 2000 time period?

23 A Did they exist at the time?

24 Q So is it your understanding that
25 video-on-demand systems did not exist at the time in

1 the 2000 time period?

2 A It was in its early --

3 (Simultaneous speaking.)

4 (Reporter seeks clarification.)

5 A I'll let the -- I'll strike my answer and let
6 the counsel object.

7 BY MR. HABER:

8 Q So the question is, so is it your
9 understanding that the video -- sorry. Strike that.

10 Is it your understanding that video-on-demand
11 systems did not exist at the time in the 2000 time
12 period?

13 MR. HANDAL: Objection; mischaracterizes the
14 testimony, beyond the scope.

15 BY MR. HABER:

16 Q You can answer.

17 A Look, there was -- you know, at that time
18 there was the early stages of music downloading, but
19 when this patent was made, in my opinion, the
20 widespread use of video on demand was in its -- if it
21 existed, was in its nascent stages because the
22 technology hadn't caught up with the process of -- of
23 furnishing pictures, sound, in a reasonable period of
24 time. So that's my answer.

25 MR. HANDAL: While you're doing that, I'm

1 going to take 15 seconds and grab my thermos of water
2 so I can object.

3 MR. HABER: All right.

4 THE DEPONENT: Do the same.

5 (Messrs Handal and Tulchin step away
6 briefly.)

7 MR. HANDAL: Proceed.

8 MR. HABER: The witness stepped out to get
9 some water too. Will be back in a moment.

10 THE DEPONENT: I'm back.

11 BY MR. HABER:

12 Q All right. Turn to Paragraph 15 of your
13 declaration.

14 Paragraph 15 refers to video-on-demand, or
15 VOD, systems.

16 Do you see that?

17 A Yes.

18 Q The last sentence of this paragraph says:

19 "VOD showings are, at their essence
20 private."

21 Do you see that?

22 A Yes.

23 Q What do you mean by that?

24 A I mean that it's not public. It's not a
25 broad audience involved, and it's a direct

1 transmission from a seller to a buyer, privately.

2 Q Is it your opinion, then, that VOD showings
3 cannot be made in a public setting?

4 MR. HANDAL: Objection; beyond the scope.

5 THE DEPONENT: Well, again, I'm -- I look at
6 the time period we're talking about, and that is the
7 relevant period of 2000, 2001. And I don't think at
8 the time that the patent contemplated public VOD
9 showings.

10 BY MR. HABER:

11 Q You mentioned a VOD operator or a hotel or
12 other establishment.

13 Do you see that?

14 A What line? Yeah, I see it. Yeah, I see it.
15 System, hotel, yeah, I see that.

16 Q Would you agree that the video-on-demand
17 technology that was providing video to a hotel could
18 also be used, for example, to provide video to a bar
19 or a restaurant or a different public setting?

20 MR. HANDAL: Objection; beyond the scope,
21 hypothetical.

22 THE DEPONENT: I didn't -- I viewed a hotel
23 transmission or VOD to a hotel is a private showing.
24 That's -- that's how I looked at this.

25 ///

1 BY MR. HABER:

2 Q You would agree that VOD that delivers video
3 to a hotel could just as easily deliver it to a bar or
4 a restaurant, and that wouldn't be private; right?

5 A Well, again, I'm not sure that this system
6 existed at the time the patent was filed.

7 MR. HANDAL: Ben, could you speak up a bit?
8 I'm having trouble hearing you, and the live feed is
9 running a little slow, so...

10 BY MR. HABER:

11 Q When you say "this system" in your previous
12 answer, what are you referring to, "this system"?

13 A Do you want to read back my answer so I can
14 track what you're talking about?

15 Q Sure.

16 The question I asked is:

17 "You would agree that VOD that
18 delivers video to a hotel could just as
19 easily deliver it to the bar or a
20 restaurant, and that wouldn't be
21 private; right?"

22 And your answer was:

23 "Well, again, I'm not sure that
24 this system existed at the time the
25 patent was filed."

1 And so my question now is, what are you
2 referring to when you say "this system"?

3 **A The system of sending the film to a hotel.**

4 Q And the statement that you make in
5 paragraph -- that VOD showings are, at their essence,
6 private, that's because you're referring to a system
7 in a hotel, and a hotel room is private, but if there
8 was a public system or a public forum, you would agree
9 that that would not be private; right?

10 MR. HANDAL: Objection; beyond the scope,
11 mischaracterizes the witness' testimony.

12 THE DEPONENT: You know, I -- I got to say,
13 you know, again, having been in this business a while,
14 those are two different functions. One of the
15 functions of this kind of system is to show privately
16 a movie in a hotel room when it is ordered by the
17 consumer.

18 Now, if you want to talk about -- and I don't
19 even know if it existed at the time. It may have. If
20 you want to talk about showing a film to the public in
21 a bar or restaurant, that involves a separate
22 arrangement. There's a license agreement that has to
23 be entered into. You have to pay royalties. It's a
24 whole different system.

25 ///

1 BY MR. HABER:

2 Q And those -- those separate agreements and
3 arrangements, those are business agreements and
4 arrangements, not necessarily technical; correct?

5 A I'm not a technical guy, so I don't know
6 about the technical. I'm talking about business terms
7 commonly understood by professionals in the business
8 at the time that this patent was filed.

9 Q Would you agree that the patent at least
10 contemplates venues that are substantially smaller
11 than movie theaters paying for content using a credit
12 card?

13 A I have no idea --

14 (Simultaneous speaking.)

15 MR. HANDAL: Objection; beyond the scope,
16 mischaracterizes the witness' testimony.

17 THE DEPONENT: Please break it down. I mean,
18 that's a complex question. I don't even know what it
19 means.

20 BY MR. HABER:

21 Q Okay. Would you agree that the patent
22 contemplates paying for multimedia content using a
23 credit card?

24 MR. HANDAL: Objection; mischaracterizes the
25 evidence.

1 THE DEPONENT: There may be some payment from
2 an exhibitor or a television station back to the
3 distributor for use of the -- by use of a credit card.
4 That's my answer.

5 BY MR. HABER:

6 Q Would a movie theater generally pay for
7 content from a distributor using a credit card?

8 A Well, if they had to order special materials,
9 such as posters and the reproduction of posters and
10 trailers and TV spots and things like that, they may
11 have had to pay for that and they may have had to use
12 a credit card.

13 Q Would you agree that other venues like
14 schools, libraries, nonprofit organizations could
15 purchase multimedia content using a credit card as
16 described by the '725 patent?

17 MR. HANDAL: Objection; vague, beyond the
18 scope.

19 THE DEPONENT: Yeah, I mean, I didn't talk
20 about that in my declaration, so I didn't really form
21 an opinion about it.

22 BY MR. HABER:

23 Q Column 16 is discussing the meaning of,
24 quote, "broadcast exhibitor" in the claims. And it
25 says that:

1 "It is illustrated in the Patent
2 specification at Column 15, Lines 57
3 through 60, which refers to 'a customer
4 that is a television station.'"
5 Do you see that?

6 **A Yes.**

7 **Q Is it your opinion that a broadcast**
8 exhibitor, as recited in the '725 patent, is limited
9 to a television station?

10 MR. HANDAL: Objection; beyond the scope,
11 calls for a legal conclusion.

12 THE DEPONENT: So when I viewed the patent
13 and formulated my opinion, I understood that the two
14 types of exhibitor that this patent was dealing with
15 was either a broadcast exhibitor or a television
16 station or a movie theater.

17 **BY MR. HABER:**

18 **Q Would you agree that there are other types of**
19 broadcast exhibitors besides television stations?

20 MR. HANDAL: Objection; beyond the scope,
21 argumentative.

22 THE DEPONENT: Well, in my mind, again,
23 television stations transmit the product using radio
24 waves and an antenna to the public. That's what I
25 understood.

1 BY MR. HABER:

2 Q And I think later in Paragraph 17 you talk
3 about "television stations operating over the air."

4 Do you see that?

5 A Right.

6 Q And when you're referring to transmitting
7 information using an antenna, is that what you're
8 referring to as over-the-air transmissions?

9 A Yes.

10 Q And you would agree that there are other
11 types of broadcasters besides over-the-air
12 broadcasters; right?

13 MR. HANDAL: Objection to form, beyond the
14 scope, argumentative.

15 THE DEPONENT: I think you need to rephrase
16 the question, please.

17 BY MR. HABER:

18 Q I'm not sure how I could say it differently.

19 The question is, would you agree that there
20 are other types of broadcasters besides over-the-air
21 broadcasters?

22 MR. HANDAL: Objection; beyond the scope,
23 argumentative, unintelligible.

24 MR. HABER: Tony, you really have to keep
25 your objections consistent with the rules. You can

1 object to form. You can object to scope. You can
2 object to relevancy.

3 I mean, you have these really long speaking
4 objections. I'm trying to give you a little leeway
5 here because you were just admonished by the board
6 yesterday. Please keep your objections within the
7 rules.

8 BY MR. HABER:

9 Q The question is, would you agree that there
10 are other types of broadcasters besides over-the-air
11 broadcasters?

12 MR. HANDAL: Same objection.

13 THE DEPONENT: So I understand broadcasters
14 to be over the air using radio waves and antennas.
15 And that allows the film to be shown to the public in
16 that manner.

17 BY MR. HABER:

18 Q You understand that there are other ways that
19 are -- that were available at the time for
20 transmitting movies to the public; right?

21 A No.

22 Q So is it your opinion that satellite
23 television operators did not perform broadcasting?

24 MR. HANDAL: Beyond the scope.

25 THE DEPONENT: So --

1 MR. HANDAL: Calls for a legal conclusion.

2 THE DEPONENT: -- in my mind, a satellite
3 transmission to a home is not a broadcast.

4 BY MR. HABER:

5 Q Is it your opinion also that a cable
6 television operator does not perform broadcasting?

7 A Again, it's a direct relationship between
8 cable operator and the buyer of the product. It's not
9 public. It's not a broadcast.

10 MR. HANDAL: Belated objection: Beyond the
11 scope.

12 BY MR. HABER:

13 Q Just to be clear, your opinion is that a
14 broadcast exhibitor is only a television station that
15 provides over-the-air radio broadcasts; right?

16 A The question, please.

17 Q Just to be clear, your opinion is that a
18 broadcast exhibitor is only a television station that
19 provides over-the-air radio broadcasts; right?

20 A No. No. And I have stated this a number of
21 times.

22 During the relevant period, based on my
23 knowledge in the industry, the patent, as I read it,
24 contemplated two types -- primarily two types of
25 exhibitors: A broadcast exhibitor, which is a TV

1 station, a movie theater, movie theater, and that's
2 what the patent was about. That's my opinion.

3 Q Paragraph 21, there's a reference to this
4 word "sales" in Claim 11. And Claim 11 recites:

5 "Automatically collecting sales
6 information."

7 And Claim 1 doesn't use the word "sales," but
8 Claim 1 talks about locally marketing and selling said
9 multimedia material.

10 And the question that I have for you is, is
11 the reference to sales in Claim 11 the same sales that
12 are a result of selling, as recited in Claim 1?

13 A I don't understand that question.

14 MR. HANDAL: Objection.

15 (Simultaneous speaking.)

16 BY MR. HABER:

17 Q Let me show you the claim.

18 MR. HANDAL: Objection; form.

19 THE DEPONENT: First of all, if you're going
20 to ask me about something in a document, I want you to
21 point what paragraph you're talking about and -- so
22 that I can look at it, read it, and then answer your
23 question.

24 BY MR. HABER:

25 Q Fair request.

1 So Claim 11, Column 17. It's around Line 34.
2 Talks about automatically collecting sales
3 information.

4 **A Okay. I see that.**

5 Q Okay. And then Claim 1, if you go up to the
6 prior page, it's Column 16 --

7 **A Yeah.**

8 Q -- around Line 51:

9 "Allowing purchasers to locally
10 market and sell said multimedia
11 material."

12 Do you see that?

13 **A Yes.**

14 Q So the question is, the selling activity
15 that's recited in Claim 1 and the sales that are
16 recited in Claim 11, are those referring to the same
17 sales transaction or are those different sale- --
18 instances of selling?

19 MR. HANDAL: Objection to form, beyond the
20 scope, calls for a legal conclusion.

21 THE DEPONENT: Let me look at this. First,
22 we're talking about Line 50; is that right? Around
23 there?

24 BY MR. HABER:

25 Q Line -- so in Column 16, it's part of

1 Claim 1, it's around Line 51.

2 A 51.

3 (Sotto voce reading.)

4 THE DEPONENT: Is that where we're talking
5 about?

6 BY MR. HABER:

7 Q One, "Allowing purchasers to locally market
8 and sell said multimedia material."

9 A Okay. So what's the question about that now?

10 Q Okay. So that's Claim 1.

11 And then Claim 11 talks about automatically
12 collecting sales information. And as context for this
13 question, if you look at your declaration, the
14 references to sales in Claim 11 of the patent refer to
15 box office sales. That's your testimony regarding
16 Claim 11.

17 And so the question is, are those the same
18 sales that are being referred to in Claim 1 when it's
19 talking about marketing and selling?

20 MR. HANDAL: Objection; mischaracterizes the
21 evidence, beyond the scope, calls for a legal
22 conclusion, objection to form.

23 THE DEPONENT: And compound. I don't even
24 understand the question.

25 ///

1 BY MR. HABER:

2 Q Let me try it a slightly different way.

3 So the -- what you state in Paragraph 21 of
4 your declaration:

5 (As read) "The sales of Claim 11 of
6 the Patent refer to box office sales to
7 customers in the movie theater."

8 Do you see that?

9 A Let me -- let me pull it up. Claim 11
10 providing sales -- are you talking about Paragraph 21?

11 Q Yes.

12 A Okay. Let me read that.

13 (Reviewing document.)

14 So I just read it. What's the question
15 again?

16 Q Well, first, on what basis do you believe
17 that Claim 11 is referring specifically to box office
18 sales to customers in a movie theater as opposed to
19 other sales?

20 MR. HANDAL: Objection; lacks foundation.

21 THE DEPONENT: Again, in my review of the
22 patent and analyzing the various definitions that I've
23 provided in my opinion, primarily I was looking at box
24 office results.

25 ///

1 BY MR. HABER:

2 Q You would agree that nothing in Claim 11
3 actually recites that the sales recited there are box
4 office sales; right?

5 MR. HANDAL: Objection to form.

6 (Simultaneous speaking.)

7 THE DEPONENT: Yeah.

8 MR. HANDAL: Beyond the scope.

9 (Reporter seeks clarification.)

10 THE DEPONENT: Break that down.

11 BY MR. HABER:

12 Q I'm sorry. What was that? Write that down?

13 A **Break it down.**

14 Q Break it down.

15 So I think Claim 11 is fairly short. Take a
16 moment to just read it.

17 You would agree that nothing in Claim 11
18 states that the sales that are recited there are
19 specifically box office sales; right?

20 MR. HANDAL: Objection to form.

21 THE DEPONENT: In the context of the patent
22 and during the relevant period, you know, I viewed the
23 sales as box office admissions or box office receipts.

24 BY MR. HABER:

25 Q Is there a particular part of the patent that

1 you recall basing that view on?

2 A You know, the entire patent, when it was
3 filed, the -- the status of the industry at the time
4 and what it appeared to be talking about in the
5 patent: Box office receipts.

6 Q All right. If you go back to Claim 1.

7 A What column is that again?

8 Q Column 16, around Line 51.

9 A Let me get there.

10 Q Where the patent says:

11 "Allowing purchasers to locally
12 market and sell said multimedia
13 material."

14 Is it your opinion that that act there,
15 selling, is also related to box office sales?

16 A Can you identify --

17 MR. HANDAL: Objection -- objection; beyond
18 the scope, calling for a legal conclusion.

19 BY MR. HABER:

20 Q Go ahead.

21 A You -- you're going to have to, you know,
22 direct me to exactly what line you're talking about
23 here.

24 Q Sure. It's Column 16, Line 51:

25 "Allowing purchasers to locally

1 market and sell said multimedia
2 material."

3 Do you see that?

4 **A I'm looking.**

5 Q Highlighted on the screen to the extent you
6 can read the --

7 **A I can't read it, Counsel.**

8 Q Understood.

9 **A I mean, what is this, an eye test?**

10 Q Constraints of technology. I apologize for
11 that.

12 So let me know when you see it. Column 16,
13 Line 51:

14 "Allowing purchasers to locally
15 market and sell" --
16 (Simultaneous speaking.)

17 **A Do me a favor. Can you let me think for a
18 minute and read this before you talk. Thank you.**

19 (Reviewing document.)

20 **A Okay. I've read F. What is your question?**

21 Q The question that I have is, where the patent
22 Claim 1, Element F is reciting:

23 "Allowing purchasers to locally
24 market and sell said multimedia
25 material."

1 A I'm sorry. I'm sorry. My phone's ringing
2 off the hook. I'm trying to tell people not to call.
3 You know what? I'm going to just shut this thing off.
4 Check it in a break.

5 Okay. Sorry about that.

6 Q No problem.

7 A Phone's ringing off the hook. People want my
8 advice.

9 Q In demand. I understand that.
10 Let me ask my question again.

11 A Okay.

12 Q The question I have is, where the patent in
13 Claim 1, Element F is reciting "Allowing purchasers to
14 locally market and sell said multimedia material," is
15 it your opinion that that sale is also referring to
16 box office sales?

17 A That's the how -- that's how I read it.

18 MR. HANDAL: Belated objection; calls for a
19 conclusion of law and beyond the scope.

20 BY MR. HABER:

21 Q I think we've been going for about an hour.
22 Do you want to take a quick break?

23 A Sure. What -- you got an estimate of --

24 THE STENOGRAPHER: Do you want to go off the
25 record?

1 MR. HABER: Yeah, let's go off the record.

2 (Recess taken from 10:53 a.m. to 11:11 a.m.)

3 BY MR. HABER:

4 Q All right. Welcome back from the break.

5 During the break, did you speak with anyone
6 about the substance of your deposition?

7 A No.

8 Q I want to go to Paragraph 23 of your
9 declaration. And there -- the paragraph expands the
10 bottom of one page to the start of the next. It's
11 discussing the collection and dissemination of
12 marketing data cited in Claim 11, and then on the next
13 page in the middle of the paragraph, it says:

14 "Empowers the purchasers [i.e.,
15 exhibitor-movie houses] to locally
16 market and sell multimedia material."
17 Do you see that?

18 A Yes.

19 MR. HANDAL: Could you put that up on the
20 screen. I'm having trouble following.

21 MR. HABER: Oh, sorry. I thought I was
22 sharing the screen. Let me do that.

23 THE DEPONENT: I don't know how you can read
24 that. I can't.

25 MR. HANDAL: Well --

1 BY MR. HABER:

2 Q "Empowers the purchasers [i.e.,
3 exhibitor-movie houses] to locally
4 market and sell multimedia material."
5 Do you see that?

6 A **Yeah, I see it.**

7 Q The bracketed information, "[exhibitor-movie
8 houses]," that's not part of the quote; right? That
9 was added by you into the quote?

10 A **I believe that. That was added in, yeah.**

11 Q You would agree that purchasers may include
12 other entities besides movie houses that are
13 exhibitors; right?

14 MR. HANDAL: Objection; calls for a legal
15 conclusion, beyond the scope.

16 THE DEPONENT: Argumentative.

17 BY MR. HABER:

18 Q Again, please don't object to my questions --

19 MR. HANDAL: Argumentative.

20 (Simultaneous speaking.)

21 MR. HANDAL: Why don't we accept that
22 additional objection?

23 BY MR. HABER:

24 Q Respectfully, you're here -- please answer my
25 questions -- not to object to them. Allow Tony to

1 make his objections for the record and then please --

2 **A Sometimes I just have to clue him in.**

3 Q I understand it's very hard to separate
4 yourself from being an attorney and being a witness.
5 I get it. But please try to just answer my questions.

6 So the question was, you would agree that
7 purchasers may include other entities besides movie
8 houses that are exhibitors; right?

9 MR. HANDAL: Same objections; argumentative.

10 THE DEPONENT: Yeah. Could you repeat the
11 question slowly and maybe not in a leading manner.

12 BY MR. HABER:

13 Q I will repeat the question. But, again,
14 please try not to object to my questions.

15 **A I'm listening. I'm trying. I'm doing my**
16 **best.**

17 Q Okay. Okay.

18 So the question: Can purchasers include
19 other entities besides movie houses that are
20 exhibitors?

21 **A In what context is the question being asked?**
22 (Simultaneous speaking.)

23 MR. HANDAL: Objection; calls for a
24 conclusion of law, argumentative, beyond the scope.

25 ///

1 BY MR. HABER:

2 Q So if we look at the paragraph I have on the
3 screen, Paragraph 23, it's talking about Claim 11, and
4 it's talking about Claim 1, Paragraph F. And so that
5 is the context of my question.

6 And so --

7 MR. HANDAL: Same objections.

8 BY MR. HABER:

9 Q In that context, as you're reciting it in
10 your declaration, Paragraph 23, can purchasers include
11 other entities besides movie houses that are
12 exhibitors?

13 MR. HANDAL: Beyond the scope, conclusion of
14 law, argumentative.

15 THE DEPONENT: Is it theoretically possible?
16 Maybe. But this is what I was referring to when I
17 made my declaration.

18 BY MR. HABER:

19 Q So when you provided this declaration, your
20 understanding of purchasers was exhibitor-movie
21 houses; correct?

22 A **Primarily, yes.**

23 Q In Paragraph 35 of your declaration -- I'll
24 scroll down to it -- you reference a Dr. Houh.

25 Who is Dr. Houh?

1 A I believe he was an expert that gave a
2 declaration in this case, or opinion.

3 Q Did you review Dr. Houh's declaration in this
4 case?

5 A Not really. I was -- you know, I focused on
6 a couple of clauses in there, and that's what this is
7 referring to.

8 Q The portions of Dr. Houh's declaration that
9 you reviewed, were those directed to you by counsel?

10 A Yes.

11 Q And is there a reason why you did not review
12 other or the entirety of Dr. Houh's declaration?

13 A Yes.

14 Q What is that reason?

15 A Because it's a technical declaration and I'm
16 not opining on any of the technical aspects of his
17 declaration. I'm just opining that his use of the
18 word "broadcast" does not apply to a movie theater.
19 It's that simple.

20 (Document published on the screen.)

21 Q I want to bring up another document. You
22 might not have it printed out in front of you, so I'm
23 just going to show it to you on the screen.

24 This is the patent owner's response to the
25 petition. And so this is a document that sets out

1 patent owner's arguments for why -- that contradict
2 Dr. Houh's opinions and the other arguments of the
3 petitioner.

4 And so I want to direct you to a particular
5 portion of this document, which recites the level of
6 ordinary skill in the art, Page 11 of the patent owner
7 response. And I'll bring it up on the screen as I get
8 there.

9 And at Page 11 of the patent owner response,
10 there is a Heading IV "Level of Ordinary Skill in the
11 Art," and there's a paragraph there. And I'll let you
12 read that paragraph.

13 And the question that I have for you is,
14 based on your educational background, do you believe
15 that you have the level of ordinary skill in the art
16 that is recited here on Page 11 of the patent owner
17 response?

18 MR. HANDAL: Objection; beyond the scope.

19 THE DEPONENT: Well, first I got to try and
20 read it.

21 MR. HANDAL: It's compound. Compound.
22 That's the other objection.

23 Okay. That completes the objection.

24 THE DEPONENT: Give me a chance to read this
25 thing, because it's moving around on the screen.

1 BY MR. HABER:

2 Q Trying to make it a little bigger for you.

3 MR. HANDAL: Calls for a conclusion of law.

4 THE DEPONENT: I don't really understand the
5 question.

6 BY MR. HABER:

7 Q So the question that I have for you is, do
8 you believe that you satisfy the level of ordinary
9 skill in the art as recited here on Page 11 of the
10 patent owner response?

11 MR. HANDAL: Objection; calls for a
12 conclusion of law, compound, beyond the scope.

13 THE DEPONENT: Look, I didn't write this
14 thing, but I consider myself an expert in this area of
15 defining customary at the time -- at the relevant
16 time, terms related to marketing and distributing of
17 films.

18 BY MR. HABER:

19 Q Fair. I think that's fair.

20 And so if the level of ordinary skill in the
21 art is defined as what's recited here, including, for
22 example, a bachelor of science degree in electrical
23 engineering, engineering physics, computer
24 engineering, computer science, you would agree that
25 you don't have those specific qualifications; right?

1 MR. HANDAL: Objection; hypothetical,
2 compound, beyond the scope, objection to form.

3 THE DEPONENT: And I do have experience
4 related to marketing, distribution, multimedia
5 material. So I certainly qualify as an expert in that
6 area.

7 I have made it clear that I am not an
8 engineer. I don't know anything about engineering
9 physics. I don't know anything about computer
10 engineering.

11 But I am an expert on the terms and
12 conditions of marketing and distribution at the
13 relevant time, 2000, 2001, when the patent was filed.

14 MR. HANDAL: Belated objection; calls for a
15 conclusion of law with respect to the prior question.
16 BY MR. HABER:

17 Q All right. At this time I don't think I have
18 any further questions, and so I think we can wrap up.

19 A Okay. Any final statements of anyone or can
20 I just jump off?

21 MR. HANDAL: Well, I don't have any questions
22 on cross, so I think the witness can head out to that
23 doctor's appointment, but maybe -- you have quite a
24 bit of time, so it shouldn't be a problem.

25 THE DEPONENT: Okay. Well, thank you very

1 much, gentlemen and ladies. Appreciate it.

2 (Discussion held off the record.)

3 MR. HABER: Going back on the record for a
4 moment to explain that the last document that I
5 referred to, the patent owner response, was previously
6 filed by the patent owner as Paper 18 in the record.

7 THE STENOGRAPHER: Mr. Handal, do you need a
8 rough draft?

9 MR. HANDAL: No, I don't think so.

10 MR. HABER: I'd like a rough.

11 MR. HANDAL: We'll take it in the normal
12 course.

13 (The deposition concluded at 11:24 a.m.)

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1 DEPOSITION OFFICER'S CERTIFICATE

2

3 STATE OF CALIFORNIA)
4 COUNTY OF ORANGE) ss.

5

6

7 I, TAMI L. LE, hereby certify:

8 I am a duly qualified Certified Shorthand
9 Reporter in the State of California, holder of
10 Certificate Number CSR 8716 issued by the Court
11 Reporters Board of California and which is in full
12 force and effect. (Fed. R. Civ. P. 28(a)).

13 I am authorized to administer oaths or
14 affirmations pursuant to California Code of Civil
15 Procedure, Section 2093(b), and prior to being
16 examined, the deponent was first duly sworn by me.
17 (Fed. R. Civ. P. 28(a), 30(f)(1)).

18 I am not a relative or employee or attorney
19 counsel of any of the parties, nor am I a relative or
20 employee of such attorney or counsel, nor am I
21 financially interested in this action. (Fed. R. Civ.
22 28).

23 I am the deposition officer that
24 stenographically recorded the testimony in the
25 foregoing deposition and the foregoing transcript is a

1 true record of the testimony given by the witness.
2 (Fed. R. Civ. P. 30(f)(1)).

3 Before completion of the deposition, a review
4 of the transcript [] was [X] was not requested. If
5 requested, any changes made by the deponent (and
6 provided to the reporter) during the period allowed,
7 are appended hereto. (Fed. R. Civ. P. 30(e)).

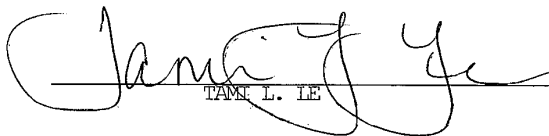
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9 Dated: May 11, 2025.

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TAMI L. LE

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